

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF       )  
ARTESIAN WATER COMPANY, INC. FOR A       )  
CERTIFICATE OF PUBLIC CONVENIENCE AND       )  
NECESSITY TO PROVIDE WATER SERVICES       )       PSC DOCKET NO. 15-1025  
PURSUANT TO 26 *DEL. C.* §203C       )  
"ROUTE 9 AREA"       )  
(SUBMITTED JUNE 4, 2015; FILED JUNE       )  
18, 2015; AMENDED AUGUST 7, 2015)       )

**ORDER NO. 8780**

**AND NOW**, this 8<sup>th</sup> day of September, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on June 4, 2015, Artesian Water Company, Inc. ("Artesian") submitted an application ("Submitted Application") with the Commission pursuant to 26 *Del. C.* §203C (e)(1)b.2<sup>1</sup> seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations to provide water services to four parcels of land in Sussex County, Delaware, referred to as the Route 9 area (the "Proposed Service Area"); and

**WHEREAS**, the Submitted Application included evidence that Artesian had mailed notice of such application and the options available to all of the landowners of record in the Proposed Service

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<sup>1</sup> 26 *Del. C.* §203C(e)(1)b.2 provides, in pertinent part, that the Commission shall issue a CPCN if the applicant has submitted, together with the application, the following: Evidence that all landowners of the proposed territory have been notified by certified mail, or its equivalent, of the filing of the application, such evidence consisting of: Copies of all materials returned to sender; and 1 of the following: One or more petitions requesting water service from the applicant executed by the landowners of record of each parcel or property to be encompassed within the proposed territory to be served.

Area. In addition, Artesian published notice of its Submitted Application in two newspapers of general circulation; and

**WHEREAS**, Section 2002-8.4 of the Commission's "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities," 26 *Del. Admin. C.* §2002 (the "Regulations"), provides that if a petition for water utility services is executed by an agent of the landowner of record, the applicant shall provide with the petition evidence to demonstrate the agent's authority to act for the landowner of record; and

**WHEREAS**, Artesian failed to provide with the Submitted Application evidence to demonstrate that one person who signed a petition for water service had the legal authority to act on behalf of the landowner of record; and

**WHEREAS**, based on this omission, the Commission Staff ("Staff") determined that the Submitted Application was incomplete; and

**WHEREAS**, on June 18, 2015, Artesian filed additional necessary information that met the requirements of 26 *Del. Admin. C.* §2002-8.4. At that time, the Submitted Application and this additional necessary information completed the filing (the "Completed Application"); and

**WHEREAS**, Staff reviewed the Completed Application to ensure compliance with the statutory provisions of 26 *Del. C.* §203C and the Regulations. Because Artesian failed to meet one of the timing requirements of the Regulations,<sup>2</sup> Staff suggested that Artesian file a request for a waiver of this regulatory requirement; and

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<sup>2</sup> Pursuant to 26 *Del. Admin. C.* §§2002-9.1 and 9.2, before filing an application for a water CPCN, an applicant must send a required form of notice to each landowner of record in the Proposed Service Area not more than

**WHEREAS**, on August 7, 2015, Artesian filed a request for a waiver of the timing requirement as allowed by 26 *Del. Admin. C.* §2002-1.5.<sup>3</sup> As "good cause" for the waiver, Artesian argued that (i) granting the requested waiver would be in the public interest because the timing requirement is an administrative rather than a statutory requirement; (ii) Artesian had provided all necessary information about the parcels; (iii) Artesian understood that no customer complaints had been made regarding the Completed Application; (iv) Artesian believes that granting the waiver should not be unduly disruptive for customers and would provide for an administratively efficient use of resources; and (v) Artesian believes that extending water service to the parcels listed in the Completed Application would not harm or degrade its ability to provide safe, reliable water service for its present customers; and

**WHEREAS**, Staff has confirmed that no written comments regarding the Completed Application or Artesian were filed in response to the published legal notices. In addition, Staff has submitted a memorandum to the Commission dated August 19, 2015, which confirms that the Completed Application now meets the requirements for granting Artesian a CPCN pursuant to 26 *Del. C.* §203C and the Regulations except for the timing requirement set forth in 26 *Del. Admin. C.*

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thirty-five days and not less than thirty days prior to the filing of the application.

<sup>3</sup> Under 26 *Del. Admin. C.* §2002-1.5, the Commission may by Order, and for good cause, waive any obligation under the Regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision.

§2002-9.2.<sup>4</sup> Staff supports granting a waiver of the regulatory timing requirements in this particular instance for the reasons set forth in its memorandum to the Commission. Accordingly, Staff recommends that the Commission grant Artesian a CPCN based on the Completed Application and also grant Artesian a waiver of 26 *Del. Admin. C.* §2002-9.2;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE  
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 *Del. C.* §203C(e), a CPCN is hereby granted to Artesian to serve the Proposed Service Area more specifically identified by the Sussex County Tax Map Parcel Numbers 235-31.00-10.00, 235-31.00-18.00, 235-31.00-17.00 and 235-14.00-121.00.

2. Based on the provisions of 26 *Del. Admin. C.* §2002-1.5, the Commission also excuses Artesian's failure to follow 26 *Del. Admin. C.* §2002-9.2 and determines that such failure to follow this regulatory requirement is not material to its decision to grant or deny the Completed Application given that Artesian mailed the required form of notice to the landowners of record, although untimely, and no public comments were received in response to the mailed notices.

3. Artesian shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this CPCN.

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<sup>4</sup> Under 26 *Del. Admin. C.* §2002-9.2, the form of notice required by the Regulations shall be sent to each landowner of record not more than thirty-five days and not less than thirty days prior to the filing of the application.

4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

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Chair

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Commissioner

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Commissioner

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Commissioner

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Commissioner

ATTEST:

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Secretary